

UNITED STATES DISTRICT COURT

Northern District of California

ROBERT F. SAMUEL & PATRICIA A.
SAMUEL,

Plaintiffs,

v.

CITIMORTGAGE, INC., et al.,

Defendants.

No. C 12-5871 MEJ

**ORDER DENYING AS MOOT
DEFENDANT'S MOTION TO
DISMISS**

Pending before the Court is Defendant's Motion to Dismiss. Dkt. No. 5. However, on February 7, 2013, Plaintiff filed an Amended Complaint. Dkt. No. 11. Under Federal Rule of Civil Procedure 15, a party may amend its pleading once "as a matter of course" within "21 days after service of a responsive pleading or 21 days after service of a motion. Fed. R. Civ. P. 15(a)(1). Thus, as no prior amended complaints have been filed, Plaintiff was entitled to file an amended complaint as a matter of course under Rule 15(a). The amended complaint supersedes the original complaint, which is treated as non-existent. Since Defendant's motion is based on Plaintiff's original complaint, the Court hereby DENIES Defendant's motion as moot. Defendant shall file an answer or other responsive pleading within 21 days from the date of this Order. The February 21, 2013 order to show cause hearing is VACATED and the order to show cause DISCHARGED.

Plaintiff is advised that no further amendments may be made without seeking leave of Court pursuant to Rule 15 and Civil Local Rule 7. Any attempt to file an amended complaint without proper notice to Defendant under Civil Local Rule 7 and a court order shall be stricken.

IT IS SO ORDERED.

Dated: February 7, 2013



Maria-Elena James
United States Magistrate Judge